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A C C O U N T
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O F T H E
Rebel Prisoners,

In the Counties of

Middlesex and Surrey,

BY A

Special Commission of *Oyer and Terminer*, held at the Courts of *Common-Pleas* and *Exchequer* at *Westminster*, and the Court of *Admiralty* in *Southwark*, before the several Judges therein mentioned :

W I T H

Some Passages relating to them after Conviction ; their Petitions, Speeches, Behaviours, Letters, &c.

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Monday May 7. 1716. At the Court of Exchequer Westminster. On the Bench, Lord Chief Justice Parker, Mr. Justice Powis, Mr. Justice Eyres, Mr. Justice Prat.

THE Court being sat, *Richard Gascoigne Esq;* was first set to the Bar, where he deliver'd a Petition, which he likewise spoke to: The purport of which was, to desire the suspending his Tryal to some farther Time, in regard that he wanted a material Witness out of the Country, and call'd Evidence to prove that he had endeavour'd before to have had him ready in Town against his Tryal; but being a Servant to one Mr. *Townley*, he was gone a Journey with his Master, when the Messenger sent by Mr. *Gascoigne* went down, and that he had since taken the necessary care to have the said Witness fetch'd up. The Debate upon this took up a considerable time; but as the Prisoner insisted that this Witness wou'd be of great Service to him in making his Defence, by Swearing to some Circumstances of his being forced into the Rebellion, the Court thought fit to allow him ten Days time for bringing this Witness to Town: And he was remanded to *Newgate*, with a strict Charge to the keeping him in safe Custody.

Henry Oxborough was then set to the Bar; The Indictment was open'd by the Attorney and Solicitor General, who enlarg'd upon the heinousness of the Rebellion in general, and in particular setting forth the Part the Prisoner bore in it, &c. and to this call'd Witnesses for the King: These were chiefly the Reverend Mr. *Patten*; and Mr. *Calderwood*, who acted as Quartermaster General

General to the Rebel Army ; and depos'd, That the Prisoner appear'd with the Rebels at their first Meeting in *Northumberland*, and had the Reputation of commanding the *English* under Lieutenant-General *Forster* ; the several Motions and Marches of the Rebels were recounted by these Witnesses ; and particularly, *Calderwood fair*, That a Detachment of 200 Horse being made toward the Lord Viscount *Longdale's*, they were commanded by the Prisoner.

Being ask'd where they saw the Prisoner, and what they observ'd of him ? they said, They saw him frequently at the Head of the *English* Horse, in their March from *Rodberry* to *Preston*, where they saw him among the other Chiefs of the Rebels at the Time of the Action, and at the Place where was held their Council of War. Mr. *Patten* declar'd farther, That after the Council of War was held, to consider on their Submission, he saw the Prisoner go out of the Town, as was then said, to treat with General *Wills*. And *Calderwood* said, That he was present at his Return, and that the Prisoner told the rest, there was no Hopes for 'em, but to surrender at Discretion.

His Council, who were Mr. *Sergeant Darnel*, and Mr. *Kettleby*, insisted in his Defence, first, That there was a Misnomer in the Indictment, he being therein call'd by the Name of *Oxborough* ; whereas his true Name was *Oxburgh*. And Secondly, That tho' indeed it was sworn that he had been among the Rebels, yet it did not appear that he had any other Arms than a Sword, which all Gentlemen wear, nor had committed any one Act of Hostility ; whereas the late Act, for trying Persons in one Country, for Treasons committed in another, did require some special Proof of the actual committing that Treason. That as to his being sent out to treat with his Majesty's Generals, the Part of a Mediator, was not under the Construction of manifest Treason, and hoped the most favourable Interpretation would be given for the Prisoner.

To the first Part of this Defence, it was observ'd by the Lord Chief Justice, in his Charge to the Jury ; That it appear'd, by the King's Evidence, that he passed by the Name of *Oxborough*, and that if it could be proved (as it had been) that he had, at any time, gone by, and own'd that Name, it was sufficient to support the Indictment, tho' indeed the Prisoner might write his Name *Oxburgh* or *Newburgh*.

To this, Evidence were call'd for the King, one of which was the Landlord of a House where the Prisoner had lain, who said that he went by, and own'd the Name of *Oxborough*, and on some Occasion telling the Witnesses his Name, he gave it himself that very distinct Pronunciation of *Oxborough*. It likewise appear'd, That his Majesty's Officers received and treated with him by the Name of *Oxborough*.

That as to the other part of the Defence : If a Man shou'd be found among Rebels, any ways Aiding, Abetting, Comforting, &c. tho' he was not actually in Arms, or committed Hostilities, yet it was Treason within the Law ; and that the Part of a Mediator, which it was pretended he had Acted, shew'd plainly the Confidence of Rebels placed in the Prisoner.

One of His Majesty's Officers being ask'd, Whether in his Treating for the Rebels, he did not include himself ? answer'd, That he did ; and was received and treated with as a Rebel.

The Prisoner took Occasion, on going through this part of the Evidence to ask one of his Majesty's Officers, *viz.* Colonel *Cotten*, who was present when the Prisoner was before Mr. *Wills*, Whether he did not then hear the General give them some Hopes or Assurance of Mercy, by extolling the Virtues and Clemency of the King ? To which Colonel *Cotten* answer'd, That he was so far from giving them any such Hopes, that when the Prisoner told the General,



ñeral, He cou'd not but be a Person of Interest wou'd he recommend them to the King ; but he refused even that.

The Jury went out, and after a short stay brought him Guilty of High-Treason.

Tuesday May 8. 1716. *At the Court of Admiralty in the Marshalsea, Southwark, The Tryals of JAMES HUME Esq; and JOHN FARQUARSON, On the Bench Lord Chief Justice King, Mr. Baron Price, Mr. Justice Eyres.*

THE Evidence against Mr. *Hume* were the Reverend Mr. *Patten*, and others : These depos'd, That they frequently saw this Gentlemen among the Rebels, both on their March and at other Times ; and that for the most part he wore a Knott, or Cockade in his Hat, which was a Distinction generally us'd among the chiefest of the Rebels ; but they could not say he had any particular Command, or signaliz'd himself by any Overta&t. His Council insisted for him, That they did not think the Proof was clear against him, in not making it appear that he bore Arms, or had any Share in opposing His Majesty's Forces : But if it shou'd appear that he had through Indiscretion brought himself under the Law, which made it Treason to appear with those in Arms against the Government, yet, they hoped, the Court and Jury would consider him as a Person wholly incapable to act with any thing of Malice or Fore-thought, for that it was well known that he was a Person of a very weak Understanding ; a mere Youth, at some times rash and furious, at other times stupid and silly, and from his very Cradle generally esteem'd little better than an Idiot ; which they call'd some Witnesses to speak to.

This indeed, by his Behaviour might very reasonably be credited, for either it was true, or he had Judgment enough to feign the Part very naturally ; for he frequently laugh'd at the Bar, and shew'd a very wild and odd sort of Behaviour. But as these Symptoms of his Incapacity did not fall under the Construction of Law, tho' it might entitle him to Mercy else-where, and in that it appear'd he had Reason enough to keep under Decorum among the Rebels.

The Jury, after a short Consideration, found him Guilty of High-Treason.

John Ferguson or Farquarson, was then set to the Bar: It was depos'd against him, That he was frequently seen among the Rebels on their March, and at some other Places ; but the Witnesses were not positive to his bearing Arms ; and cou'd not say he had any Command. The Prisoner made a very Pathetick Defence to every Circumstance alledg'd against him ; and in his Plea shew'd, That as a Vassal to the Earl of *Southesk*, he was, in that Lord's Name, violently carried from his own House by a Party of Horse, and brought Prisoner to *Kenmure's* Army at *Kelso* : That he solemnly protested against serving the Pretender, and endeavoured frequently to make his Escape, particularly in the North of *England*, where he was taken and carried back to *Forster's* Army, and severely reprimanded, and would have been punished with Death as a Deserter, but was protected by his Kinsman Capt. *Peter Farquarson*, and oblig'd to be more cautious afterwards, for fear of being Hang'd or Shot. That he had no Weapons but a small Walking Sword, and bore no Character, and never once assisted at the Proclaiming of the Pretender. That he was always watched as a suspected Person, and often threatned, and

that he had frequently declared his Aversion to the Rebellion, and refused at Preston to go to the Barricade when commanded by a Captain of the Rebels, declaring he would not fight against King George's Forces; for which Refusal he was sent Prisoner into the Guard house. All which was own'd by the King's Evidence

Mr. Farquharson had his Witnesses examin'd: Some Gentlemen of the Government in Scotland who have known him for several Years, deposed, That they were surpriz'd to find him among the Rebels; that he had always a fair Character; that he was indeed a Vassal to the Earl of Southesk, but they had never heard him suspected of Rebellion; and that he had always, to the best of their Knowledge, been a Friend to the Government.

The Matter being on both Sides impartially sum'd up, the Jury, after a short stay, brought him in not Guilty.

Tuesday May 11. 1716. At the Court of Common-Pleas, Westminster, *The Tryal of ALEXANDER MENZIES Esq; On the Bench Lord Chief Justice King, Mr. Justice Blencow, Mr. Justice Tracy, Mr. Justice Dormer.*

THE Evidence for the King against this Gentleman, declar'd, That they saw him first at Perth, where he join'd the Rebels, as likewise at several Places on the March, till they arriv'd at Preston, where he was also seen on the Day of Action, in which he assisted against his Majesty's Forces. That he had Arms, particularly a Sword; but could not say he had any Command.

His Council said in his Defence, That tho' indeed some Circumstances were sworn against him, which if true wou'd make him truly Criminal, yet if their Instructions were right, they did not doubt but to satisfy the Court and Jury, That the Prisoner had been forced by meer Violence into the Rebellion, and express'd his Dissatisfaction thereat; and that the Character he bore would in a good measure serve to justify what shou'd be said in his Defence.

They then call'd Evidence, who depos'd, That when he came to Perth he was brought as a Prisoner without Sword or other Arms, and that at Langholm he had made an Attempt to get off with the Scots who went away there. That he had been seen at several Places on the March without any Arms, and Guarded.

These Witnesses being ask'd, If he might not at several Places have made his Escape if he pleas'd? They said it was a very difficult Matter to get away, or if re-taken they wou'd be misus'd. But the Witnesses for the King, made it appear, That they never saw any Restraint laid on any Person: That the Towns they lay at were open Towns, and no Guard kept; and that when the Scots went off at Langholm, it was a very easy thing to have gone off with them.

The Prisoner to his Reputation call'd the Lord James Murray, and other Gentlemen, who gave him a very favourable Character; and added, That they never look'd upon him to be a Man disaffected to the Government.

In his own Defence he said, That he had several Times since His Majesty's Accession to the Throne, declar'd himself against the Pretender's Interest, and in favour of the present Establishment, and that his Family had suffer'd on Account of their Loyalty. That his House lying near Perth he was brought Prisoner

Prisoner

Prisoner thither, and used barbarously by the Rebels, who threaten'd him with Fire and Sword, in case he refused to go with them ; but that he forbid his Servants to follow him, nor took any Arms with him, or was follow'd by any of his Tennants. That he was kept a Prisoner under a Guard at *Perth* till the passing the *Forth*, and then sent, and forc'd into a Boat to pass the same, against which he shew'd great Relu&ctance. That he was always watch'd while he was among the Rebels, lest he shou'd escape, which he once attempted, but was re-taken, and afterwards more strictly look'd after. That he had no Arms saving his Wearing Sword, neither had he any Command, or was in any Action. But there appear'd no Proof of this ; and it was observ'd, that his appearing with the Rebels, tho' he had no Command, or was in actual Hostilities, was Treason in Law.

The Jury after a pretty long stay found him Guilty.

John Robertson was this Day set to the Bar, in order for his Tryal ; but there being a Litteral Error in the Names of one of the Jury, it gave his Council an Opportunity to insist, that he had not a true Copy of the Jury deliver'd to him, which the Law expressly allows, and so his Tryal was suspended.

Saturday May 12. 1716. *At the Court of Admiralty, in the Marshalsea, Southwark, The Tryals of FRANCIS FARQUARSON and JOHN ENNIS, On the Bench Mr. Justice Powis, Mr. Justice Dormer, Mr. Baron Montague.*

*F*rancis Ferguson or Farquarson, was set to the Bar : Against him it was deposed, That he was first seen in Arms at *Kelso*, and at several Places on the March till they came to *Lancaster*, where, as well as at several other Places, the Pretender was proclaim'd. That he was again seen at *Preston* walking with some of the Rebels with his Sword by his side ; some of those Witnesses being ask'd, If he might not have made his Escape from the Rebels, had he attempted it ? They said, That they did think he, or any one might ; for they saw no Confinement laid on them. The Council pleaded for the Prisoner, That he was forc'd into the Rebellion against his Consent and Liking ; and to manifest this, had several times attempted to get away before they came to *Preston*, but was prevented. Some of the Witnesses for the Prisoner said, That it was difficult and dangerous to make an Escape, one or two of the Highlanders being shot by their own Party for attempting it. He call'd some Persons who had known him long, who declar'd, That they had never heard him speak disrespectfully of the Government, and that they had always believ'd him a Friend to it ; but there was a plain and positive Proof to his being in Arms, and no Evidence at all to the Force, nor that he had used Endeavours to separate himself from the Rebels, which it seem'd by the Evidence he might very easily have accomplish'd ; The Evidence being impartially sum'd up, and the Law stated, it was left to the Jury, who after some stay brought him in not Guilty.

Upon this Verdict, a great Uproar was rais'd in Court, by clapping of Hands, and shouting ; for which Insult upon the Court, two Persons were apprehended, one of them (who was summon'd as a Jury-man) was fin'd 100*l.* and to find Sureties for his good Behaviour for a twelve Month. The other fin'd 50*l.* and a Years imprisonment.

John

John Ennis being set to the Bar, and the Indictment open'd, it was deposed in Evidence, That he was seen in the Rebellion from the Beginning, at the passing the *Forth*, and several Times on the Rebels March to *Preston*: Here he was likewise seen, both the Night before, and on the Day of Action, walking with several of the Rebels, with his Sword on, both in the Streets, and in the Market-place. He had no Witnesses to contradict any part of this Evidence; but insisted by his Council, That he had been forced into the Rebellion; for being a Vassal of the Earl of *Mar's*, he received an Order from the said Earl to join him at *Perth*, upon Pain of Fire and Sword, which was brought him by *Jockey Forbes*, the Earl's Bailiff of *Kildrummy*: He said he understood this Summons to be for a Hunting Match; they having been often summon'd upon that and other Occasions, but knew nothing of any Rebellion till afterwards. He produc'd this Original Letter or Order, but the Court wou'd not let it be read in Evidence, unless the Person had been there to swear to the Delivery of it.

He pleaded farther, That tho' indeed it had been sworn, that he was seen with the Rebels, yet he carry'd no Arms, and wore only a Walking-Sword, as he usually had done. That he would have several times left them, but knew not how, having a Wife and several Children, with whom he wou'd gladly have been. But there was no Proof of this, or any thing he alledg'd, yet the Jury thought fit likewise to acquit him, disagreeable to the Nature of the Charge, by which they ought to have directed themselves.

This Day Five of the Rebel Prisoners retracted their former Plea, and pleaded Guilty to their Indictments, viz. The two Mr. Douglasses, Capt. Maclean, Mr. Scrimshaw, and Mr. Skeen, who received Sentence of Death the same Day.

Tuesday May 15. 1716. At the Court of Admiralty in the Marshalsea, Southwark. The Tryals of RICHARD TOWNLEY, and EDWARD TILDESLEY Esq;. On the Bench, Mr. Justice Blencow, Mr. Justice Tracy, Mr. Justice Prat, Mr. Justice Eyres.

Richard Townley of Townley in the County Palatine of Lancaster Esq; Against this Gentleman it was deposed, That he appear'd among the Rebels at *Preston*, was present with them in several Places in the Town: That there was a Troop among them call'd Mr. Townley's Troop, consisting of about 20 Men, which had all Arms of one Sort or other; and in this Troop were his Coachman, his Butler, and his Postillion: It was observ'd likewise, that there had been Money offer'd to one of the King's Witnesses to go out of Town, and not give Evidence.

His Council said in his Defence, That they did allow there had been a very vile and unnatural Rebellion carried on, and that it had been sworn that the Prisoner was among the Rebels, but that it did not appear that he acted any Part among them; but they hoped to shew he came thither by Constraint: And as for that which was call'd his Troop, it was an easie, nay, a very specious Matter for the Rebels to give a Reputation to a bad Cause, to distinguish their Forces by the Names of Gentlemen of the best Credit in the Country:

Country : That it was true, one of the King's Evidence swore, that he saw him in a red Wastecote, and a Blunderbus on his Arm, at the Head of his Troop ; but they call'd Evidence, who depos'd, That there was a Person so distinguish'd, but his Name was *Lennard*, who commanded that Troop so call'd ; and that Mr. *Townley* had no such Wastecote on, during his being at *Preston*. He call'd Witness to prove, that he left his House for fear of being secur'd by the Militia of the Country, who were then gathering together to secure Papists, and Persons reputed to be disaffected to the Government.

The first of these was his House-keeper, who depos'd, That on the 7th of November, the Militia of the Country came to her Master's House, and swore they wou'd shoot him : That they fired a Pistol into the Room where her Master and Mistress were in Bed ; tho' it is remarkable that this Evidence said after, That her Master was gone before they came ; and in several other Matters answer'd very indirectly to several Questions that were ask'd her. She was ask'd if her Master had not, among his Cloaths a red Wastecote ? She said, Yes ; but he had it not with him at *Preston* : That he took with him Three Shirts, and a Neckcloth or two ; but no Cloaths, except those on his Back.

Being thus driven from his own House, as he said, he went towards *Rochdale*, and there came to the House of one Mrs. *Ramsden*, near that Town, whom he desired to conceal him, telling her, that the Militia were in Pursuit of him to take him. This Woman depos'd, That he came the same Night to her House, and therestaid till next Day ; but some of the King's Forces marching that Way, and a Carriage happening to break near the House, she told him she fear'd he was not safe there, and advised him to go toward *Yorkshire*. But the Prisoner answer'd, That wou'd not be safe neither, for the King's Forces were up there.

This Witness was ask'd, Why she thought he wou'd be safe there ? She said, She did not know ; but that she thought they would have taken him up. Which produc'd this Observation from the King's Council, That it appear'd that the Prisoner seem'd afraid of the King's Forces, and of the Militia, who would have done him no manner of Harm, but rather have been a Protection to him ; at the same time that he had sent his Servants away with his Horses to the Rebels, lest they shou'd fall into the King's Hands, or be of any Use in his Service. It was likewise observ'd, that from the Time he came to *Ramsden's* House, to the Time he arriv'd at *Preston*, there was no Account where he was, or had been.

To this he said, he could have given an Account very clearly, but that the Servant who then attended him was a Prisoner at *Chester*, and he could not procure him, tho' he applied several times to have him up, but understood it could not be granted. That from *Rochdale* he set out with the said Servant, designing to go to *Kirkham*, on the Western side of *Lancaster*, as thinking that part most safe, having sent Home to know if it was safe for him to return, and found it was not ; but by the Way was surrounded by a Party of Highlanders, and carried Prisoner to *Preston*, where he alledg'd he remain'd under Restraint all the time, his Horses secur'd, and himself so watch'd, that he cou'd not Escape from them as he intended.

As for his Servants who were among the Rebels, they had been sent away with his best Horses, that they might not be seiz'd by the Militia, and that he did not direct them to go to the Rebels, nor knew how it came to be so.

That as to his being taken by the Rebels, and carried violently to *Preston*, there was no Proof of it, and every one might alledge the same : That as to his being brought Prisoner to the Guard, it was usual in all Garrisons, when any Strangers enter the Town, to carry them to the Guard to be examin'd ;

but it appear'd, that as soon as he had discover'd who he was, being Brother-in-law to the Lord *Widdrington*, he had been set at Liberty, and went where he wou'd, and might easily have made his Escape; it appearing by the King's Evidence that he walk'd where he wou'd, and several People went in and out during the time he was there, yet he remain'd in the Town to the last: That it seem'd strange likewise, that he should send his Servants with his Horses to the Rebels; who were actually in their Service, under Pretence of securing them, or that they shou'd come there without his Order.

Mr. *Townley* himself said, That what was alledg'd by the King's Council of his flying from the Militia, or fearing to fall into the Hands of the King's Forces, who would have done him no Wrong, might be true to others; but in the Case of Roman Catholicks, on such Occasions, they were usually taken up, their Horses and Arms seiz'd, and themselves confin'd, so that at best it was very chargeable and troublesome to them; to avoid which, they usually retired till the Noise was over, and then return'd with Safety to their own Housess.

He likewise call'd Witnes to prove that he wou'd have hired a Horse to get away from *Preston*; but whether this was before the King's Forces were upon them, or after, did not appear; nor that he seem'd dissatisfied with the Rebellion. Upon the Whole, the Jury went out, and after half an Hour's Stay, brought him in Not Guilty.

Edward Tildesley of the *Lodge* Esq; Against him it was sworn by one Evidence, That hearing a Shout, he ran to see what was the Matter, and heard presently that Mr. *Tildesley*'s Troop was come: That thereupon looking out, he saw him at the Head of about 20 Men, some of them Arm'd, riding with his Sword drawn. There were other Evidence, who depos'd, They saw him come into the Town with such Men, but none to the Particular of his Sword being drawn, but that one; nor that he appear'd to head them any Time after, or was in any Action; but that they were always call'd Mr. *Tildesley*'s Troop. It was prov'd that he was seen with some of the Rebels, and had dined with them, his own Servant waiting on him.

To all which, his Council answer'd for him, That as to the Troop going by his Name, the Reason had been accounted for before. It was true, one Evidence swore that he saw him with his Sword drawn, but it was to be observed that he said it was about Five or Six a-clock, which at that Time of the Year was usually dark, and the Evidence might not only be deceived in the Article of his Sword being drawn, but even in the Person himself; but for the latter, it would be easily shewn how he came there, for which they call'd Evidence.

Anna-Maria Tildesley said she was the Prisoner's House-keeper: That on the Friday Morning a great Number of Arm'd Men came to the House, and in a threatening manner said, they wou'd have him along with them; that they staid some time, and took such as the House afforded; during which they kept the Prisoner confined in a Room, and wou'd not suffer the Witnesses to go near him, swearing she shou'd not hinder him from going with them, and accordingly took him away with them.

Mrs. *Tildesley*, who, I think, was the Prisoner's Mother, said, that he came on the Night aforesaid, and she having no Lodging, she sent to an Inn to procure him one, and that he expres'd himself dissatisfied at his being brought thither. This was confirm'd by one *Parkinson*, who kept the Inn; and said farther, That the Prisoner and he talk'd of some Law Affair, and not of any thing relating to the Rebellion: But being ask'd where the Prisoner lay the next Night, he said, he did not know.

Anna.

Anna-Maria Tildesley being ask'd by the Prisoner's Council, if she had not heard that he attempted to make his Escape? She said yes; and among other ways it was once agreed that he shou'd go away in Womans Cloaths, and accordingly a Relation of theirs, who was a pretty Bulky Woman, and of his Size, was actually undressing; but this was unresolv'd on again.

He call'd another Witness, who swore that the Prisoner would have hired a Horse of him on Saturday Morning; and being ask'd if the Prisoner told him where he was to go? He said, he told him he was to go Home to his own House, for his own Horses were known, and that he express'd himself to this Evidence very much concern'd at his being there.

But it was strictly examin'd into whether this was not after they heard the King's Forces were coming up? For no doubt, as it was observ'd, they would many, or all of them, have been glad of any means of escaping the Danger that threatned them, when they began to see they had made a false Conjecture of the strength of the Rebels, and the vigilance and activity of the King's Troops.

The Prisoner call'd Sir George Warburton, and some other Gentlemen to his Reputation, who said, they never heard him speak with disrepect of the Government; but said he was a facetious inoffensive Man.

Upon the whole, it appears that the Jury Credited the Plea, That he was brought by Violence, and kept by Constraint: for he was likewise acquitted.

On Wednesday May 16. 1716. At the Court of Exchequer Westminster, The Tryals of Thomas Hall Esq; and Robert Talbot. On the Bench Mr. Justice Blencow, Mr. Justice Eyres, Mr. Justice Tracy, Mr. Justice Dormer, Mr. Justice Prat.

Richard Gascoigne was set to the Bar, and upon his Request for a Day longer, having a Witness on the Road, his Tryal was deferr'd to the next Day. And Thomas Hall of Otterburn in the County of Northumberland Esq; was set to the Bar. The Evidence against this Gentleman set forth, That he joyn'd the Rebels soon after their Meeting at Plainfield, and March'd with them to Preston, where he was taken.

One Evidence was very positive of seeing him at Rodberry, and that he was there with other of the Rebels.

Mr. Patten said, He saw him on Horseback among the Rebels near Woolter, but his Council disputed whether that Place was within the County of Northumberland, for otherwise that Indictment would fall, and the Attorney General might bring another Indictment laid in any other Place if he saw good. But there was one Evidence who pretty plainly made this Place out to be within the Limits of the aforesaid County; and that he saw the Prisoner on the March with the Rebels. This Evidence said he had been seiz'd by the Rebels as a Spy, and kept by them several Days, from whom he met with very severe usage. Being ask'd by the Prisoner's Council, How he who had been kept as a Prisoner, could see the Prisoner at the Bar, with the Rebels? He said, because he was carried on the March with them, having a Guard with him, so that he saw the Prisoner and others, being but at a very little distance.

The Prisoner himself said, That being a Justice of the Peace he was at the Sessions at Alnwyke when he heard of the Meeting at Plainfield; that he

rode thence to a Friend's House where he stay'd all Night, and was going home next Day, when it being a tempestuous Season, as he was stooping on his Horses Neck, with his Head to the Wind, on a sudden he and his Man were surrounded by the Rebels, and carried away by Violence: Nor had he any Arms, or above 7s. 6d. in his Pocket. His Servant depos'd this, and, that his Master was never at *Rodberry* in the time that had been sworn, but was constantly kept under a Guard of the Rebels; but being cross-examin'd, he appear'd very backward in answering such Questions as were ask'd by the King's Council: Nor did it appear, even by his Evidence, that his Master's Horses were confined, but that he look'd after and had the Charge of them as usual, and his Master rode them at pleasure. Mr. *Patten* likewise said, That he never saw any Restraint laid on him, but that he was as much at Liberty as himself.

He call'd some to prove, That he had express'd his Dissatisfaction at being forced along with the Rebels, and said, That he had no Disaffection to the Government.

But it was observed in the Charge to the Jury, which was spoke to by the whole Bench, That it was without Doubt, if a Man was seen among Rebels, tho' even he had been forced thither, and had Opportunities after (as it appear'd the Prisoner had frequent ones) to Escape from them, and did not do it, but continu'd with his Presence to Abet and Comfort them, yet it was Treason within the Law.

That if that Allegation, of being forced away, were suffer'd to pass, it wou'd be next to impossible to come as Evidence to prove them Guilty; since every Man might pretend the same Thing, and that might pass for Force, which was indeed in effect only their own Consent and Contrivance. After a pretty long Tryal, the Jury found him Guilty.

Robert Talbot was afterwards tried: The Evidence against him was very full. It was swore, That he was present with the Rebels on the Whole March from *Kelso* to *Preston*, and had the Name of a Captain among them, commanding a Troop of about 24 Horse. That at several Places he drew up and disciplin'd the said Troop, march'd constantly at their Head, and particularly drew them up round the Cross at *Morpeth*, and was present with them whilst the Proclamation was reading there, for proclaiming the Pretender. That he likewise drew them up, and headed them in the Attack at *Preston*, being then on Foot. Two of those Witnesses were Men of his own Troop.

He made very little Defence, and was found Guilty.

Being both set to the Bar, and ask'd, If they had any Thing to say why Judgment shou'd not pass? Mr. *Hall* desired a small Time might be granted him, saying, He was tried in a strange Place, where he knew no Body, and by a new Law which he did not understand; but, had he time, he had many Witnesses, who could prove that he was not disaffected to the present Government, who wou'd give him a good Character; But he was told, It was now too late, and the Court could not, in Justice, grant his Request. He then said, God's Will be done. Mr. *Talbot* had nothing to offer, and so Sentence of Death was pronounced upon them both.

Tuesday May 17. 1716. At the Court of Exchequer at Westminster, The Tryal of RICHARD GASCOIGNE Esq; On the Bench Lord Chief Justice Parker, Mr. Justice Blencow, Mr. Justice Tracy, Mr. Justice Dormer, Mr. Justice Prat.

Richard Gascoigne: In the opening of the Indictment against this Person, it was set forth, that he had not only been actually in Arms in Lancashire, where he was taken, but had likewise been early concern'd in the Conspiracy that led to the Rebellion, particularly in a Rising which was to have been in the West of England, the seizing of Oxford, Bristol, and the Bath for the Pretender. That there had been several Boxes or Chests of Arms directed to the Prisoner, who was in great Trust and Favour with some of the Chiefs engag'd in the Rebellion; and as it was particularly observed by one of the King's Council, there were several Evidences of his under some of their own Hands, as wou'd put the Matter out of doubt, but that there were some Reasons which render'd it not so proper yet to divulge those Evidences, but which wou'd however be produced when time served. The Evidence produced against him was in manner following.

The Reverend Mr. Patten was first call'd, who spoke to the Rebellion in general, recounting the several Marches and Transactions of the Rebels: He likewise said, That he saw Mr. Gascoigne at the Bull and Mitre Inns at Preston, and in Mr. Forster's Company.

The next Evidence was one Mr. Wye, who deposed, That coming once to the Dutches of Ormond's, he saw the Prisoner in her Grace's Closet; That being introduced, he told her Grace, he was just come from France, and had seen the Duke but Six Days before, who was well, and wou'd be here quickly from Bayonne; and the Pretender, from some other Place: Upon which her Grace call'd for a Map, to find whereabouts St. Sebastian lay. That he was ask'd by her Grace what People said at Paris, especially in relation to Sir William Windham; and ask'd Mr. Gascoigne, Whether it was true which was said in the Publick News, That he had Letters found in his Pocket of dangerous Consequence? To which Mr. Gascoigne said, He could not tell; but if it were true, he had those Things about him, that a School-Boy wou'd deserve to be whipp'd for carrying in his Pocket. It being at that time generally discours'd about Town, that Sir William Windham had surrender'd himself. Gascoigne said, That he had sent or carried him one of the Proclamations (but the Evidence cou'd not be positive which) and added, If he was taken their Design was ruin'd, for there were a Hundred Gentlemen who waited only for a Signal, and Sir William wou'd be at the Head of 8 or 9000 Men. That Lady Rochester having ask'd him (Mr. Gascoigne) where Sir William was? Whether, if he shou'd tell her Ladiship, she would not make use of it to perswade him to surrender? But if it were only to give Sir William Notice of the Proclamation, he told her, that he had already sent him one. The said Mr. Wye farther declared, That when he was in her Grace's Closet he saw a Gentleman dress'd very fine in Laced Scarlet Cloaths, which he understood was one of the Cottens, and having since seen Mr. Cotten, knows it to be the same Person.

There were some other Circumstances, which the Evidence *Wye* said Mr. *Gascoigne* told him ; and that the Prisoner said, That he came to *London* to learn whether Sir *William Windham* had made any Discovery.

The Prisoner denied what this Witness had said, and ask'd him several Questions, which *Wye* answer'd very readily, and stuck close in general, with great Assurance, to the Truth of what he had said.

On this Occasion Mr. *Gascoigne* desired the Duchess of *Ormond*, and Lady *Emmely Butler*, might be call'd, which was accordingly done, and Chairs were placed for them in Court. They were both sworn, and her Grace being ask'd to give the best Account she could of what pass'd at the Time that Mr. *Wye* and Mr. *Gascoigne* were in her Closet, said, That there was indeed some Discourse of Sir *William Windham* at that time, about the Proclamation issied against him. Being ask'd, Whether there was not at that time some talk of the Pretender, or of *Bayonne*? She said, She thought there might be something said of *Bayonne* ; but as to the Particulars of the 8 or 9000 Men, or the Signal of a Hundred Gentlemen, she did not remember any such thing ; nay, (upon being more nearly question'd) she said she could almost be positive there was no such thing said. Lady *Emmely Butler* said, That what her Sister had related, was true, and she knew nothing else.

Mr. *Wye* was again call'd, and confirm'd his former Evidence, which he persisted in very positively ; when the Prisoner desired some Questions to be put to him, which tended to call his Reputation in question, as to the Course of his Life ; which Mr. *Wye* answer'd in the following manner, That indeed he had been somewhat Extravagant in his Youth, and spent his Father a pretty deal of Money. That he had served as a Voluntier in the Army in *Spain*, and all those that knew him there wou'd give him a good Character. He call'd some who had known him for about Six Months past, who said, he had the Character of a very honest Man, and behaved himself very well : He said he could have brought many others to his Reputation, but did not imagine he shou'd have had any Occasion ; and that he could have added many Particulars to discredit the Prisoner's Reputation, but he chose to omit them, because he wou'd not aggravate things against him.

It was observed, That part of *Wye's* Evidence at least was confirm'd ; that he was at the Duchess of *Ormond's*, the time he speaks of, was not deny'd ; and as for some Particulars, it seem'd possible that some Affairs of a very great Concern might at that time employ her Grace's Thoughts, so as she might not exactly remember or observe all that pass'd.

Another Evidence was Mr. *Nathaniel Wilcox*, one of His Majesty's Messengers, who said, he had a Warrant on the 2d of November last, to go to the *Bath* to seize the Prisoner ; but when he came there, heard he had been gone from thence about a Fortnight ; and that some Chests of Arms, which had been seized there, were directed to *R. G.* or *G. R.*

One *Calderwood*, who was Quarter-master among the Rebels, said, That he saw the Prisoner at *Preston* on the *Friday*, and asking who he was, was told, he was come from the *Bath*, a Warrant being out against him ; that he was a true Friend to the Cause, and would do 'em good Service. That on *Saturday*, the Day the King's Forces came up, he saw him several times on Horseback, and sometimes a-foot, with his Sword drawn, very active in assisting to defend the Town, and that he was present where the Council of War was held.

Another said, he saw him drawn up in Rank with the Rebels that Day, he had particular Reason to remember it, for he came Six times with *Brandy*, and that two Persons who collected the Excise for the Pretender, call'd to Mr. *Gascoigne* to ask him to drink. He repeated this Evidence two or three times, and added, that Mr. *Gascoigne* refus'd to drink.

It

It was by all agreed, that he did not appear as a Prisoner, but quite otherwise. The Prisoner said in his Defence: That the Warrant issued against him on *Wye's* Evidence, was the sole Occasion of his Misfortune, for the fear of that Warrant drove him toward the North, after he had sought Shelter in *Stafford* and *Derbyshires*; and that he went after to Sir *Roger Bradshaigh's*, near *Wigan*, and desired the Protection of his House; but Sir *Roger* refus'd him: He then ask'd Sir *Roger* to direct him to some Tenant of his; but he refus'd that also, saying, it was the same thing; but told him, there was an Inn hard by, where he might lie: That he was seiz'd on at a Place call'd *Heslington*, and carried before Justice *Noel* of *Reed*, and after Examination there, discharg'd. He told Sir *Roger*, that he was going toward *Yorkshire*, and ask'd if *Bolton* was not in the Way?

That from *Reed* he borrow'd Mr. *Townley's* Man to shew him to *Leverpool*, where by the Way he was seiz'd and carried Prisoner to *Preston*.

He call'd Sir *Roger Bradshaigh*, and some other Witnesses, to support these Allegations, especially the Person who he said was to be his Guide to *Leverpool*. This Person said, that he was sent by his Master to shew the Prisoner to *Leverpool*, and coming near *Ribble-Bridge*, a Party of the Rebels stopp'd him, and asking where they were going, he said, to *Leverpool*; but they said he shou'd go along with them, and so carried him and the rest to *Preston*: There were three or four others with 'em, but he knew not who they were. Being ask'd if they disarm'd 'em, he said, he did not see that they did: That when he came to *Preston*, he went to his Master's House there, and the rest went farther into the Town. He was ask'd who they were that were with the Prisoner; but he said he did not know: One of the Witnesses had said, that he heard one or two of 'em were call'd by the Name of *Cotton*; but this Evidence insisted he knew not who they were. Nor did it appear by this Evidence, that either the Prisoner, or those with him, were used in the least like Prisoners. This Witness being cross-examin'd seem'd very backward to explain some Parts of his Evidence, particularly, he could not remember that he saw any body at *Reed* but the Prisoner; tho' there was near 100 Men that brought Mr. *Gascoigne*. He pretended he did not know *Yorkshire*, tho' his Master had an Estate there, and he had been at it, but did not know it was *Yorkshire*; and in fine, answer'd very indirectly to many plain and necessary Questions the Court asked him. And it seem'd that Mr. *Gascoigne's* Talk of going into *Yorkshire*, was only, that he was ignorant till then where the Rebels were; but this being two Days after the Rebels arrived at *Preston*, it seem'd really probable that he had Notice thereof, and so chang'd his Rout, and travell'd in the Night, taking the direct Way to *Preston*, where he was received and respected by General *Forster*.

It was observed farther by the Court, that he complain'd, all his Misfortunes were owing to the Warrant issued on *Wye's* Information, which forced him to quit the *Bath*, and go towards the North, having shelter'd himself three Weeks in *Stafford* and *Derbyshires*; whereas it appear'd, that the Warrant was not granted till the 2d of *November*, and he was at Sir *Roger Bradshaigh's* the 7th. It was likewise very strange, nor did any of the Evidence on either Side, make it any thing out, how Mr. *Gascoigne* came to be discharg'd before Justice *Noel*, a suspicious Person, and in those troublesome Times; nor, indeed, how the other Persons who were with *Gascoigne*, travelling to *Preston* (one or two of whom, one of the Witnesses said, he heard were call'd *Cottons*) came to Mr. *Noel's* House, or fell into *Gascoigne's* Company: Then, that they travell'd in the Night, setting out, according to their own Evidence, about one or two in the Morning; and to have a Servant sent with them from that very House toward *Leverpool*, as they pretended, tho', indeed,

the direct Road to *Preston* seem'd very strange ; but grant it otherwise, he had before said he was going toward *Yorkshire*, from which, *Leverpool* was the direct contrary Way, and in Truth, the Design of the Rebels, when they enter'd *Lancashire*, was at first to have gone to *Leverpool* ; but 'tis likely the Prisoner got other Intelligence, and so turn'd toward *Preston*.

After a long and full Hearing, he was found Guilty of High Treason, and received Sentence of Death accordingly.

Friday May 18. 1716. At the Court of Exchequer Westminster, The Tryals of NICHOLAS WOGAN, LANCELOT MACKINTOSH and CHARLES RADCLIFFE Esq;: On the Bench, Lord Chief Justice Parker, Mr. Justice Tracy, Mr. Justice Dormer, Mr. Justice Prat.

John Blair, retracting his former Plea, deliver'd a Petition, wherein he supplicated the Court to re-command him to his Majesty's Favour, and pleaded Guilty to the Indictment.

Nicholas Wogan, who was first try'd, made but little Defence : It was proved, that he appear'd among the Rebels, had a Command, and was seen on the Day of Action : He said something by way of Excuse for being inadvertently led into the Rebellion, and was found Guilty.

Lancelot Mackintosh : Against him it was depos'd, That he march'd with the Rebels, being one of those who came over the *Forth* : He had the Name of a Captain in Brigadier *Mackintosh*'s Regiment : None of the Evidence could say they saw him in any Action, or present at any time at Proclaiming the Pretender.

He call'd abundance of Evidences, and even made Use of those call'd for the King, to depose, That he was forced from his House by a Party from the Earl of *Mar*, and that he was us'd little better than a Prisoner all the time he was among the Rebels : That 'twas true, *a Commission* was offered him, but he refused to receive it, saying, there were many young Gentlemen fitter, and more deserving of the Commission than he who was near 68 Years of Age. He likewise call'd Proof, That at the time of the Revolution he had his House plundered, and one of his Servants murdered, for refusing to follow *Dundee* into the Rebellion. He had several People of Credit to speak for him ; as Brigadier *Grant*, and Mr. *Forbes*, Members of Parliament, Mr. *Ross*, and others ; who all said, That they ever looked on him as a Person well affected to the present Establishment.

Another Evidence said, That he was likewise his Neighbour, and believed him to be well-affected to the Government ; that when he has been discoursing with some Jacobites against the Pretender, the Prisoner had joined him in Argument against those who argued for him. Many things appeared which shewed him forced into the Rebellion at first, and that he was not a disaffected Person ; but by his continuing with the Rebels, and not escaping, or proving that he endeavoured it, the Law was strong against him ; for, as the Court observ'd, That if a Man be forced into Rebellion through Fear or Threats, it may be pleaded in Law for him ; but then it must not be any vain Fear, a fear of Plundering, or the Loss of Goods or Money only, but a Fear of Death, and

and that actually proved. The Jury, after a considerable Stay, brought him in Guilty.

Against Mr. Radcliffe, it was deposed, That he was seen at *Hexham* with his Brother the Earl of *Derwentwater*, at *Rodberry*, and several other Places: That he rode on Horseback with the Rebels, and kept in their Company. He asking one of the Evidence what Horse he rode on, or what Cloaths he had on? Was answer'd, That he often changed his Horses, and rode, for the most part in a Scarlet Cloak. It was likewise deposed, That one of the King's Evidence had been offered some Guineas to go out of Town and say nothing against Mr. Charles. He had no Council, and said, That he conceived the Evidence were not positive against him, and hoped the Court would observe what the Law allowed in his Favour. The Jury after a little Stay, found him Guilty.

Being all set to the Bar, and asked if they had any thing to move in Arrest of Judgment; Mr. Radcliffe said, He was just come from Abroad, and coming to see his Brother, was unfortunately drawn along with him when that unhappy Affair happened, and hoped the Court would consider it. He was told, there was a proper Place where this might be heard, but it did not lye there.

Mr. Blair said, The Court had promised to recommend him for Mercy; but he was told, he might be Pardon'd after Sentence, but not before: So that Judgment was pronounced upon them all.

On Wednesday May 30. 1716. At the Court of Admiralty, Southwark, The Tryals of John Dalton and William Tunstall Esqs; On the Bench Lord Chief Justice Parker, Mr. Justice Powis, Mr. Justice Tracy, Mr. Baron Price.

John Dalton Esq; of the County of *Lancaster*, was brought to his Tryal: Against this Gentleman it was deposed, That he met the Rebels at *Lancaster*, and was there seen with the Earl of *Derwentwater*, the Lord *Widdrington*, and others; and that the said Earl, with a Number of other Rebels, came to Mr. Dalton's House on *Tuesday*, where they staid all Day, and that he went away with them. One Evidence said, in particular, That she saw him at *Lancaster* on the *Monday*, in the Company before-mention'd, and again on the *Wednesday* Morning, when she heard him say, *The Business is now done; we have nothing to do but to March to Preston*. Another said, That they heard on the *Sunday*, that the Rebels were to be at *Lancaster* the next Day, when it was clear, even by his own Evidence, that the next Morning he rode out but with one Servant, and went to *Lancaster*, as the Evidence had sworn, which was not at all disputed.

He was likewise proved by several to have been with the Rebels at *Preston*, particularly by the *Horsler* at the *White Bull Inn*, where he usually set up his Horses when he came to that Town, who said he ran to him to have taken his Horses; but he told the said Evidence, that he was going further. Another remarkable Passage of his being (and confederating) with the Rebels, was proved by the Servant of one *Chorley* of *Preston*. This *Chorley* had some time before seiz'd a Horse of the Prisoners, by *Virtue of the Act of Parliament*

Parliament, which directs, that no Papist shall keep Horses of such a Size ; and when the Rebels were Masters of *Preston*, Mr. *Dalton* came to the Witness, *Chorley*'s Man, and demanded the Horse ; the Witness answering him, That his Master was not at home (he being gone away with the Dragoons towards *Wigan*, on the Approach of the Rebels, who he was in dread of) he then told the Servant, That he would have the Horse ; who call'd out his Master's Sister to speak to the Prisoner, whom with Threats he obliged to deliver the Horse ; but the Prisoner not thinking him so good as when he was seiz'd, said they had spoil'd the Horse, and compell'd her to pay him 10*l.* for him, which she did. This was observ'd by the Court and King's Council, to shew the Prisoner acted with Alacrity in the Rebellion, for the Horse had been seiz'd by Law ; but he had made use of Violence, and unlawful Means, to obtain him again, and made his Demands good only by the Advantage of the Power of the Rebels. The Truth of his being at *Preston*, and constantly there in Company of the Rebels, was confirm'd by many other Witnesses.

His Council pleaded for him, That he was forced into the Rebellion, and call'd Evidence to endeavour to prove it. One swore, That the Earl of *Derwentwater*, and others, came to his House on the *Tuesday*, and there lived at Discretion, and call'd for, or took whatever the House afforded : That they were got about the Prisoner, persuading him to go with them, and threatned him with Death, and took away his Arms ; but he refused to go, and said, He had no Inclination, and that he heard them at high Words, but could not distinguish what was said. That afterwards the Prisoner was brought out and put on Horseback, and went away with them, but shew'd Reluctance. He was likewise met at some distance from his House, riding among the said Company of Rebels, by another Witness, who said, He seem'd to go unwillingly, that he look'd Melancholly, and he could perceive Tears in his Eyes, and his Eyes to look red ; but this Witness could not but say, That he rode as at other times, and it was pretty extraordinary, as was after observed by the Court, that this Witness, at the Distance of a Streets breadth should see Tears in the Prisoners Eyes ; or indeed, it might be very probable, that at parting with his Wife, and going on such a dangerous Affair, it might Occasion some melancholy Reflections.

He call'd several to his Character, one of which was the Parson of the Parish Mr. *Dalton* lived in, who said, That some time before the Rebellion, he was at a Wedding with Mr. *Dalton*, who then read him a Letter from *London*, which said, That they expected a Rising in *Scotland* under the Earl of *Mar*, and that there would be other Risings in *England* ; That he told the Prisoner, he hoped he would not meddle in the Matter ; who answer'd him, That he had neither Intention nor Inclination to do it ; that he lived very happily, and would not endanger himself. This Evidence declar'd farther, That he has at several other Times had Discourse with the Prisoner, whom he never heard to express himself against the Government, and so far unlikely to favour the Pretender's Cause, that he had sometimes express'd some Scruples against the *Romish* Religion : Upon which Occasion, he was ask'd by the Court, Why he, being a Minister of the Church of *England*, did not endeavour to improve those Notions in him, in order to convert him ; who answer'd, That he had made some Essay that way, but then found him alter'd in his Judgment. Upon the Whole, he gave him the Character of a very peaceable Roman-Catholick, as several others did ; and one said, That he had heard him drink King George's Health : One, in another Particular, depos'd, That when they had heard of the Rebellion in *Northumberland*, he said to the Prisoner, *Perhaps they'll come into Lancashire, and then they'll be about your House* ; that the Prisoner answer'd, He would have nothing to do with

with them. This, and other Witnesses said, That he was the most peaceable of all the Roman Catholicks, and never, at the time of Elections, meddled in the least, as some did : One of the Members for that County justified this, declaring, That asking his Interest once, he told him, He would meddle of no Side.

After a very long Hearing, Mr. *Dalton* having nothing farther to say, the Court summ'd up the Evidence, observing first the Circumstances of the Law in Cases of High Treason : That if a Man was seen among Rebels, and continu'd with his Presence to abett and comfort them, tho' he were not actually in Arms, or committed Hostilities, yet it was High-Treason : That the Force mention'd, must be a continu'd Force ; that a Man was not only forced away at first, but kept as a Prisoner under close Constraint all the time ; which appear'd by some Witnesses examin'd, not to have been the Case of the Prisoner ; at *Preston*, where he was seen at full Liberty, and whence he might have escaped often, if he had attempted it.

As to any favourable Circumstances that might have been given in Evidence for the Prisoner, as to his Character or peaceable Behaviour, they were proper only in another Place : That Mercy belong'd only to his Majesty, who was a just Dispencer of it ; it was his undoubted Prerogative, and 'twas robbing him of his Right to take the Power of bestowing it out of his Royal Hands.

After the Court had impartially stated the Case, the Prisoner said, He had a Witness to examine, who would prove, that he was at Home all *Wednesday*, and not that Day at *Lancaster*, as one of the Evidence against him had sworn : He was told, That it was very unprecedent to hear Witnesses after the Charge had been given ; but, however, they condescended to it, and this Evidence, who was Mrs. *Dalton*'s Woman, swore him at Home all the Day on *Wednesday*, so that it was left to the Jury which Witness they should believe, in respect to that Point, but then neither of them affected his being afterwards at *Preston*. The Jury went out, and after a very considerable Stay, brought him in Guilty of the Indictment, and he received Sentence accordingly.

When he was ask'd what he had to say why Sentence shou'd not pass, he said, He begg'd the King's Pardon, and desired the Court to intercede with him for Mercy. Upon this Occasion the Lord Chief Justice *Parker* observed, as he had done before, That the Prisoner, as well as others, had so far abus'd his Majesty's Clemency, by derogating from their former Submission, and giving the Government all the Trouble possible, even in standing it out, and combating with the King to the very last, that they might very well expect to meet with some Severity, were not his Royal Breast always open to the Intercessions of Mercy, when it has been requested. That there was one Gentleman, who had retracted his Plea, and own'd the Indictment, and upon Recommendation had a Pardon already passing the Seals for him ; That it would have been very well for the Prisoner to have made his Request for Mercy sooner, and, as his Lordship observed, they were not his Friends who advis'd him to do otherwise ; That recommending of Prisoners to Mercy was a Part he very much delighted in, and he wish'd to have had better Grounds to have done it for the Prisoner ; but however, he would report his Case in the most impartial Manner to the King.

William Tunstal Esq; was then set to the Bar : He made some Objections to his being now tryed, in that he said, That he was the last in the second Indictment, and was call'd on his Tryal the Middle of the first Indictment ; but he was told it was in the Power of the Attorney-General, to bring on their Tryals when he pleas'd, he then acquiesced, and put himself on his Tryal ; but on the swearing the first Jury-Man, he told the Court he would save them

them any further Trouble, by throwing himself on his Majesty's Mercy, and owning his Indictment, which being read to him, he said, He own'd himself Guilty of being taken in Arms, but not of any Design of Murdering the King, which never enter'd his Heart; but the Court told him, That he being a Man of Sense, could not but know, that had the Rebellion succeeded, it could have ended no other ways, since it was certain, that his Majesty wou'd not have run away, as their Master they declar'd for had since done. His Lordship advis'd him to draw up the State of what he had to say in a Petition, and he would recommend it to the King.

Tuesday May 31. 1716. At the Court of Exchequer.
On the Bench Lord Chief Justice Parker, Mr. Justice Dormer, &c.

THIS Day Seven Persons were order'd for Tryal, viz. *John Thornton*, who being ill, was not brought down: *Philip Hodgson*, Uncle to the Lord *Widdrington*, *Charles Widdrington*, *Peregrine Widdrington*, *Donald Robertson*, alias *Robeson*, *Alexander Macrudder*, and *Thomas Etrington*; the latter said, He humbly submitted to His Majesty's Mercy, and appeal'd to the King's Evidence, *Mr. Patten*, to do him Justice, in respect to his being under such Obligations to the Earl of *Derwentwater*, that he could not resist going with him.

The following Persons were this Day Arraign'd: *John Nairn*, Son to the Lord *Nairn*, *John Stewart*, Dr. *Patrick Blair*, *George Seton of Barns*, who before the Battle of *Dunblain*, went by the Name of Earl of *Dumfermling*, *James Robertson*, alias *Robeson*, *William Grierson*, Son to Sir *Robert Grierson of Lagg*, *John Carnegy*; these pleaded Guilty to their Indictments.

Francis Anderton Esq; frequently call'd Sir *Francis Anderton*; *Basil Hamilton*, *Archibald Rutter*, *William Shaftoe*, and *William Paul Clerk*; pleaded not Guilty.

SOME

SOME
 PASSAGES
 Relating to them after
 CONVICTION:
 THEIR
 Petitions, Speeches, Behaviours, Letters, &c.

Colonel Oxborough, having the *Wednesday* ensuing his Tryal, been brought to *Westminster* to recieve Sentence, a Rule of Court was then made for his Execution on *Monday* following; during which Time he drew up a Petition, setting forth, That he was a Gentleman, who, as well by his Religion, as by other Tyes, had been train'd up in an Affection to King *James's* Family. That being in *London* when the Oaths were by special Order under a general Administration, and having truly a scrupulous Conscience, he remov'd himself and went toward the *North*, where he was unfortunately persuaded into the Rebellion; humbly imploring his Majesty's Gracious Clemency, for which he would, during the rest of his Life, become the most Obedient of Subjects.

But this, as far as I could learn from the best Hands, never reach'd the King's. There was indeed a flash of a Report, that his Majesty had sign'd a Reprieve for him, and that it stopt in Mr. *Stanhope's* Office, and not sent till he was dead; but this was a Notorious Falsity, and very probably rais'd by his Friends, to cast an Odium on that Gentleman, or on the Government.

On *Monday* the 14th of *May*, he was carried to Execution, and the Law being Executed on him, his Body was carried off in a Herse in order to be interr'd, and his Head the Day following affix'd upon *Temple-bar*: The following Speech was deliver'd by him to the Sheriff at the Place of Execution, and afterwards order'd to be Printed.

A True Copy of the Paper delivered to the Sheriff of London, by Colonel Henry Oxburgh.

Custom has made it almost necessary for Persons in my Circumstances to say or leave somewhat by their last Words, declaring their Sentiments with relation to what they die for: In compliance with which, I have thought fit to make the following Declaration. In the first place, I declare I die a Member of the Holy Roman Catholick Church, tho' a very unworthy one, and I desire all the Members of that Communion to assist my Soul with their Charitable Prayers. I declare my self in Charity with all the World, and do from my Soul forgive all my Enemis, and all others who have any ways injured or done me wrong; and particu-
 F larly

‘ larly, I forgive all those, who have promoted my Death by malicious Misrepresentations or otherways, and earnestly beg God to forgive them, and grant them the same Blessings I desire for my own Soul. I likewise ask Pardon of all such as I have offended.

‘ It has been said, that the Catholicks, who were taken at Preston, engaged in that Affair in View only of setting a Catholick King on the Throne, and re-establishing the Catholick Religion in England ; but that is not the only Calumny charged on them. I declare for my own particular, That if King James III. had been a Protestant, I should think my self oblig’d to pay him the same Duty, and do him the same Service, as if a Catholick; nor do I know any Catholick that is not of the same Principle: For I never could find that either by the Laws of God, or the antient Constitution of the Nation, Difference of Religion in the Prince, made any Change in the Allegiance of the Subject.

‘ I might have hoped, from the great Character Mr. Wills gave me at Preston (when I treated with him for a Surrender) of the Clemency of the Prince now on the Throne (to which he said we could not better entitle our selves than by an early Submission) that such as surrender’d themselves Prisoners at Discretion, on that Prospect, would have met with more Lenity than I have experienc’d ; and I believe England is the only Country in Europe, where Prisoners at Discretion are not understood to have their Lives saved.

‘ I pray God of his Infinite Goodness restore the Nation to its former Happiness, by extinguishing all unhappy Divisions, that all Animosities and Feuds may be buried, and no other Emulation remain among the Subjects of Great Britain, but who shall be most zealous in advancing the true Glory of God, and the true Interest of the Nation.

May 14. 1716.

Henry Oxburgh.

A Petition deliver’d by Alexander Menzies Esq; condemn’d the 11th of May 1716. and after, by his Majesty’s most gracious Clemency Repriev’d; setting forth, That he had at all times been a zealous Afferter and Maintainer of the Revolution Principles, and in particular had declared himself to be so since his Majesty’s happy Accession to the Throne : That he is of the Communion of the Church of Scotland as by Law establisb’d, did always demean himself in a peaceable Manner, and had been ready to serve the Government : That the Gentlemen of his Name, and Relations, have been faithful to the Government and the Protestant Succession : That the chief of his Family lost his Life in King William’s Service, soon after the Revolution, which was very well known to many noble and worthy Persons now in Town : That the House of his Chief, Sir Robert Menzies of Menzies, an Infant, was kept out against the Rebels by his Uncle and Guardian, till it was surprized, and he carried Prisoner to Perth first, and then to Dundee, were he remained till the Rebels were chased from Perth : That his Father had his House burnt, and his Tenants ruined and plundered, for not joining with those that opposed the Revolution.

That besides what might be urg’d from the Course of his own Life, and the Loyalty of his Relations, his Case was very particular, for his House lay within a few Miles of Perth, which the Rebels had made their chief Seat, from whence they issued a Warrant of Fire and Sword against all who would not join them. And the Execution of this Warrant being committed to a very cruel Clan of the Highlanders, they carry’d him Prisoner on Foot to Perth, from his own House, where he left behind him his Horses, his Arms, and his Servants, so that he was not attended by one of them, or any of his Tenants. That he was kept Prisoner under

der a Guard at Perth for some Days, and then sent with others to the side of the Firth, and there forc'd into a Boat by the Horsemen who guarded him: That after he pass'd the Firth, he was treated as a Prisoner, without being allow'd Arms, and once attempted to make his Escape, but was retaken by the Rebels.

That tho' these Facts were not proven fully enough to satisfy the Jury, yet he humbly presumed, that the honourable Judges would attest, if requir'd to do it, that these Circumstances were so far prov'd, as he hop'd would move the Compassion of so excellent and merciful a Prince, as the King, at whose Royal Feet he threw himself, humbly imploring, That his Majesty would extend his Royal Compassion and Clemency towards him in such a manner as in his strict Wisdom and Goodness his Majesty shall think it, that the Remains of the Life which he should thereby owe to his Majesty's Goodness, might be spent in such a dutiful manner, as became one who does from his Heart own his Allegiance to his Majesty and his Royal Successors, and abhors all false pretenders to the Crown.

All the rest hitherto condemn'd, were on the like humble Petitions, or the Intercession of some Friends for them, Reprieved, except Mr. Gascoigne, who, as far as I ever could hear, never made any Intercession at all, perhaps judging himself the least deserving of Mercy of any that was condemn'd. From the following Speech which he left at his Execution, one may collect how little Reason he had to expect Mercy from the Government.

A true Copy of the Paper delivered to the Sheriffs of London, by Richard Gascoigne, who was Drawn, Hang'd, and Quarter'd at Tyburn, for High Treason against His Majesty King George, on Friday the 25th Day of May, 1716.

Take it to be my Duty to leave this Paper behind me, to refute those false Accusations and Calumnies that have been designedly spread by People who I'm afraid take pains to procure unhappy Wretches to confirm them.

In the first place, I declare I dye an unworthy Member of the holy Catholick, Apostolick Roman Church, and do acknowledge my self to be the greatest of Sinners, but bless'd be my God I have a firm confidence in the Sufferings of my Lord and Saviour Jesus Christ, by whose Merits I hope I shall be saved.

I, from the bottom of my Heart forgive all those that were my Enemies and Persecutors, and hope Almighty God, in his great goodness, (and I beseech him to do it as heartily as I beg pardon for my own Sins) will pardon them, and give them Grace to repent.

And I earnestly beg pardon of all those whom I have any wise offended or injured, and Lament that it is not in my Power to make them reparation; but as they expect to be forgiven, I hope they will do so to me. I also beg pardon of all those whom I have disedified by my Life or Conversation.

That I have had an uncommon Ardor or Zeal in my Duty and Loyalty for my most Injured and Royal Sovereign King James the 3d. I own at my Death, as I did to every Body that knew me whilst I liv'd; and I affirm, That it was not only on the account of his being a Roman Catholick, or any worldly Views, but from a true sense of my Duty, as I

take my self to be bound by the Laws of God and my Country, and as his succeeding to the Throne of his Ancestors could only make these three Kingdoms happy, and from impartial account of his Royal Person and Qualities, which make him one of the most meriting Princes in the World. My Loyalty descended to me from my Ancestors; my Father and Grand

‘ My Loyalty descended to me from my Ancestors ; my Father and Grand-
father having had the Honour to be sacrific’d in doing their Duty to
their Kings, *Charles I.* and *James II.*

‘ I think it incumbent on me to do Justice to a Gentleman whose Name
‘ I was sorry to hear mentioned at my Tryal, which surely was irregular and
‘ unpresidented, to give Evidence of any Treason that had no Relation to
‘ what I was indicted of: I declare in the Presence of God, I never saw him
‘ but twice, and at those Times I think there was not a Word talk’d of
‘ Principle or Party. And I declare in the same solemn Manner, I never
‘ knew any of his Measures or Designs, or ever had any intimacy of any
‘ kind with him; and I declare, that what was sworn at the Council and
‘ at my Tryal, was false in Relation to him.

‘ And I know a great Man should say I was intimate with a Lord in
‘ the Tower, I declare I never spoke to him, nor saw his Hand Writing,
‘ nor to my Knowledge was I ever under the same Roof with him.

‘ Nor was I ever Agent, or employed by any Person in my Life (as was suggested at my Tryal) in any politick Design, nor did I ever carry a Letter, or was I ever intrusted by one Great Man to another, nor did I ever know of any concerted measure to restore my Royal Master in my Life, more than was talkt in Publick, and in the Papers, nor as I expect Mercy, did I directly or indirectly know any thing of the Arms that was seized at Bath, directed to R. G. as was said at my Tryal.

‘ And as to Mr. Calderwood’s Evidence against me, of my being in the Market place a Saturday in the Afternoon, and that he saw me there ; to my Knowledge I had not been there until Seven a Clock at Night, when he could not see me, and if he did, not with my Sword drawn, his Evidence was entirely false, and he sent me Word two Days before my Tryal, That he could not swear any thing against me whatever. And he said I was in the Council of War ; I never (so far from being in it) knew the House it was held in, nor did I know there was one held.

‘ The Evidence of the Footman *Walmisly* was as false, he swearing me
‘ drinking of Brandy with Excisemen Six times a *Saturday* in the same
‘ Market-place. These are the two Men that swore me out of my Life,
‘ I forgive them with all my Heart, and recommend them to Repent.

‘ And as I have upon the Word of a dying Man declared all these Truths, in order to caution People not to believe Reports, and to do all the Justice I am capable of doing ; so now let me recommend to all People to think of their Duties to God and their Country, and to heal all Divisions, and exhort them to think of the means of uniting and reconciling all their Interests, and unite in the only Measures that can render them happy ; which that they may do, I beg of Almighty God to direct them, and that they may compass it.

they may compas it.
‘ I bless my God who has given me the Grace to submit patiently to all the Injuries that has been done me, as also for enabling me to resist the many Temptations I have had frequently in relation to a Gentleman upon whose account I presume they have taken my Life, because I would not concur to take his Life; but God forgive them, I do heartily. And I humbly beg the Prayers of all good Christians.

May 25. 1716.

Rich. Gascoigne.



